

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BANK OF MONTREAL)	09 – CIV – 7557 (GBD)(JLC)
)	ECF Filed
Plaintiff,)	
)	
v.)	
)	
OPTIONABLE, INC., MF GLOBAL INC.,)	
KEVIN P. CASSIDY, EDWARD J.)	
O'CONNOR, MARK A. NORDLICHT.,)	
RYAN B. WOODGATE, SCOTT CONNOR)	
and JOSEPH D. SAAB,)	
)	
Defendants.)	
)	

**DECLARATION OF LAWRENCE R. GELBER
IN OPPOSITION TO MOTION TO
DISMISS CLAIMS AGAINST DEFENDANT
KEVIN P. CASSIDY WITHOUT PREJUDICE**

I, Lawrence R. Gelber, an attorney admitted to practice in the State of New York, and before this Court, pursuant to 28 U.S.C. § 1746 declare under penalty of perjury that the following is true:

1. I represent Defendant Kevin P. Cassidy (Cassidy) in the above-captioned matter.
2. I submit this Declaration in opposition to the motion by the Bank of Montreal (BMO) to dismiss its claims against Cassidy without prejudice; such dismissal should be with prejudice for the reasons stated in the accompanying memorandum of law.
3. All the documents annexed to this Declaration are true copies to the best of my knowledge, information and belief.

4. Exhibit A is BMO's complaint.
5. Exhibit B is Cassidy's "Brief for Defendant-Appellant" dated November 7, 2013.
6. Exhibit C is the first amended complaint in AEP Energy Services, et al. v. Bank of Montreal 03 Civ. 00335 (JLG-NMK) (S.D. Ohio).
7. Exhibit D is an email chain reflecting a valuation dispute between BMO and counterparty, HETCO.
8. Exhibit E is a transcript of a telephone conversation between BMO employees Murray McIntosh and Pat Cronin as dated April 11, 2007.
9. Exhibit F is the first page of the draft memo from Penny Somerville to Murray McIntosh dated January 2007 reflecting 7,613,906 total NG contracts.
10. Exhibit G is the Deloitte Report.
11. Exhibit H is an email from William Downe dated January 29, 2007.
12. Exhibit I is the Draft Commodities Brief, written by Penny Somerville on or around April 21, 2007,
13. Exhibit J is an email dated May 5, 2007 from William Downe to Andy Plews.
14. Exhibit K is a set of handwritten notes of Penny Somerville dated February 2, 2007.
15. Exhibit L is an email from Murray McIntosh to Eric Tripp April 5, 2007.
16. Exhibit M is the memorandum dated May 18, 2007 from DKC to BMO.
17. Exhibit N is an email from Totem to BMO dated February 9, 2007.
18. Exhibit O is the "302" report of an FBI interview with Murray McIntosh.
19. Exhibit P is an email dated January 31, 2007 from Penny Somerville to herself.

20. Exhibit Q is an email from Jeff Wang to Murray McIntosh dated December 7, 2006.
21. Exhibit R is a portion of a transcript of the CFTC at oral argument on October 22, 2009.
22. Exhibit S is the transcript of proceedings before Magistrate Cott held October 30, 2013.
23. Exhibit T is a draft of a proposed amendment to Cassidy's second affirmative defense of *in pari delicto*.

Dated: Brooklyn, New York
November 27, 2013

Respectfully submitted,

Lawrence R. Gelber

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